

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	Case No. CR-04-32-M
)	
DESIRAY J. ALLEN,)	
)	
Defendant.)	

ORDER

Before the Court is defendant's Motion to Reopen the Time to File an Appeal from Judgment and Order of the Court, Pursuant to FRAP 3(6)(A), filed December 29, 2005. On January 9, 2006, the government filed its response, and on February 8, 2006, defendant filed his reply.

Defendant was indicted on January 28, 2004, and he subsequently pled guilty to an Information on March 22, 2004. Defendant was sentenced on August 18, 2004, and on August 27, 2004, he filed a Notice of Appeal. On June 8, 2005, the Tenth Circuit vacated defendant's sentence and remanded the case for re-sentencing. Defendant was re-sentenced on September 21, 2005.

Defendant now moves this Court to reopen the time to file an appeal in this matter. Federal Rule of Appellate Procedure 4(b)(1)(A) provides:

- (A) In a criminal case, a defendant's notice of appeal must be filed in the district court within 10 days after the later of:
- (i) the entry of either the judgment or the order being appealed; or
 - (ii) the filing of the government's notice of appeal.

Fed. R. App. P. 4(b)(1)(A). Further, Rule 4(b)(4) provides:


Upon a finding of excusable neglect or good cause, the district court may – before or after the time has expired, with or without motion and notice – extend the time to file a notice of appeal for a period not to exceed 30 days from the expiration of the time otherwise prescribed by this Rule 4(b).

Fed. R. App. P. 4(b)(4).

Pursuant to Rule 4(b)(1)(A), the deadline for defendant to file his notice of appeal from his re-sentencing was October 5, 2005. Further, pursuant to Rule 4(b)(4), the deadline for seeking a thirty-day extension of time was November 5, 2005. Defendant did not file the instant motion until December 29, 2005, well past both the ten-day and thirty-day deadlines. Defendant has cited no authority, and the Court has found none, for this Court to grant any extension of time to appeal beyond that provided in Rule 4(b)(4).

Accordingly, the Court DENIES defendant's Motion to Reopen the Time to File an Appeal from Judgment and Order of the Court, Pursuant to FRAP 3(6)(A) [docket no. 68].

IT IS SO ORDERED this 6th day of March, 2006.



VICKI MILES-LAGRANGE
UNITED STATES DISTRICT JUDGE